HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 4056/01 (M/S)
(Old No. 25731/1993)

Hukam Chandra and others
Vs
Dist. Judge Dehradun and others

Approved for reporting

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~~Not Approved for Reporting~~

Date of decision 23.09.2004.

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL.

WRIT PETITION NO. 4056 (M/S) 2001.
(Old No. 25731/1993)

Hukum Chandra. …. Petitioner.

Versus

District Judge, Dehradun & others. … Respondents.

Sri Ramji Srivastava, Advocate for Petitioner.
Mrs. T.Punwani, Sr. Advocate, Sri Bhupendra Singh,Advocate, Sri U.K.Kohl,Sr.Advocate and Sri I.P.Kohli,Advocate for respondents.

HON'BLE RAJESH TANDON J.

By the present writ petition the petitioner has prayed for quashing the orders dated 17.10.1992,12.05.1993 and 24.05.1993.

By the order dated 17.01.1992 (Annexure 5 to the writ petition) the order was passed declaring the vacancy on the ground that Vishnu Kumar Jain has removed his effects from the premises in dispute.

By the order dated 12.05.1993 the release order was passed releasing the accommodation in favour of the landlord. On 24.05.1993 the application filed by the petitioner under section 16(5) of U.P. Act No.13 of 1972 was rejected.

Briefly stated, according to the case of the petitioner he is a tenant of premises No.173 Ajabpur, Dehradun of which the respondent No.3 Vivek Singh is the landlord.

The petitioner has submitted that in order to evict the petitioner an application was moved under section 16 of U.P.Act No.13 of 1972 by setting a third person, namely, one Hari Chand.

The Rent Control and Eviction Officer has passed the order for the inspection of the premises and a

notice was sent to Hari Chand, the person who was shown as illegal applicant in the application for release A perusal of the inspection report shows that the Inspector has reported that neither Hari Chand was available there nor his family members were available on the spot at the time of inspection.

According to the submission made by the petitioner the petitioner has no knowledge and, therefore, according to him the proceedings for the declaration of vacancy was wholly illegal. The Rent Control Inspector has again visited on the spot on 17.05.1989 who has stated that the premises in dispute was in the tenancy of Vishnu Kumar Jain and he has vacated the premises and on the spot the illegal possession of Hari Chand was available. The report reads as under:

"i'uxr vkokl Jh fo".k dekj tSu dh fdjk;snkjh esa FkkA Jh fo".k dekj tSu i'uxr vkokl dk fjDr djds py x;s rFkk i'uxr vkokl ij gjhpUn dk v/;kSlu djk x;sA

LFky fujh{k.k ds le; i'uxr vkokl ij Jh gjhpUn dk vo/kkfud :i ls v/;kSlu ik;k x;kA"

After a lapse of two years a supplementary report was submitted by the Rent Control Inspector stating therein that the premises in dispute is in illegal occupation of Hukam Chand and in the report dated 05.06.1989 the reference of Hari Chand has been wrongly mentioned. In the report dated 17.05.1989 it has been mentioned that Hari Chand is in illegal occupation. The Rent Control and Eviction Officer vide his order dated 17.01.1992 has declared that vacancy and a finding has been recorded that Vishnu Kumar

Jain has left the premises and the premises is in illegal occupation of Hukum Chand.

On the application filed under section 16(5) of the Act the Rent Control and Eviction Officer has come to the conclusion that instead of Hukam Chand , Hari Chand was wrongly mentioned and Hukam Chand was found on the spot at the time of inspection on 01.05.1993.

Counter and rejoinder affidavits have been filed. In Column No.7 Annexure 1 of the counter affidavit, intimation given by the landlord shows that the house has been vacated by Vishnu Kumar Jain. In the release application in paragraph 2 it has been mentioned that Vishnu Kumar Jain has handed over the possession to Hukam Chand. Surprisingly neither Hari Chand nor Vishnu Kumar Jain has come forward to state as to whether they have been handed over possession at any point of time.

In order to show that he continues to be in possession and there has been no case of substantial removal from the premises in dispute so as to notify the vacancy.

The writ petition was heard earlier by another Bench of this court and the writ petition was rejected on the ground that no revision was preferred by the petitioner. The matter went to the Apex Court and on 23.02.2004 their Lordships of the Apex Court have remanded the matter for deciding it on merits. The order is quoted below:

"The learned counsel for the respondent No.1 has in all fairness not disputed the legal position as to power of the High Court to hear the writ petition but submitted that in view of the delay that has already taken place, the High Court may be requested to hear and expeditiously dispose of the writ petition on merits.

The appeal is allowed. The order dated 24.11.2003 is set aside. The writ petition is remanded back to the High Court for hearing and decision on merits. The High Court is requested to hear and decide the writ petition as expeditiously as it can and preferably within a period of four months from the date of communication of this order.

The parties through their respective counsel are directed to appear before the High Court on 08.03.2004. Status quo in the matter of possession over the suit property shall continue to be maintained by the parties till the date of decision by the High Court."

According to the petitioner he has filed the following documents.

"1- rgLhynkj ngjknu }kjk fnukd 08-09-1980 dk fuxkr tkfr izek.k&i= A

2- mRrj izn'k jkT; fo/kku ifj"kn] dh jlhn la[;k 11 fn0 12-09-82

3- Hk&jkstLo dh jlhn fnukd 5-10-83] jlhn u0 15749-

4- izFke lquokbZ fjikV fnukd 16-05-86-

5- fo/kku fcy ¼vof/k 20-03-86 ls 29-05-86½-

6- lD;kfjVh ,.M eSustesaV C;wjks dk i- fnukd 17-12-86 rFkk 12-02-87-

7- x<oky ty lLFkku dh jlhn lq[;k&48380 fnukd 24-03-88 ,oa jlhn lq0 109037 fnukd 26-06-88

8- m0iq0 jkT; fo|qr ifj"kn dh jlhn fn0 09-08-85] jlhn u0 48-

9- x<oky ty lLFkku dh jlhn fnukd 15-03-93 rFkk jlhn lq0 3748 fnukd 17-03-93-

10- Jh v'kksdqekj ;kno iq= Jh gjdepUn ;kno dh gkbZ Ldwy ijh{kk- 1983 dk izek.k&i=A

11- t0fo0vkdkj i= 69 fnukd 26-02-87-

12- Jh v'kksdqekj dk lEckf/kr fyQkQk ftl ij izfrdd dk uke Jh fQjkstqnnhu vfdr gq rFkk ikLV vkfQl dh egj dk fnukd viBuh; gqA

13- Jh v'kksdqekj dk okf"kd ifj{kkQy dkM 1972 ,oa 1973-

14- Jh lqt; dqekj ;kno dk okf"kd ifj{kkQy 1976 dk vad i=A

15- Jh gjde pUn dq uke tkjh uxj ifj{kk ngjknu dh jlhn fnukd 02-05-77-

16- izfrkc u'kuy cd dk i= fnukd 09-10-2979-"

Rule 8 deals with the opportunity of hearing in the case of vacancy declared under Section 12(4) of the Act.

Counsel for the Petitioner has submitted that none of the documents have been considered by the Rent Control and Eviction Officer while disposing of the application under Section 16(5) of the act. In AIR 1976 Allahabad 91 (Full Bench), Nanha and another Vs. Deputy Director of consolidation, Kanpur and others, the Allahabad High Court has held as under :

"If it appears that a court of fact has in substance based its findings on no evidence or that it finding is perverse in the sense that no reasonable person could possibly come to that conclusion or that it erroneously ignores a vital plea or material evidence which affects the result, a manifest error of law apparent o the face of the record leading to failure of justice can be said to be established. But if a court or a tribunal bases its finding on a consideration of all relevant evidence, but an appellate or a revisional court or tribunal while affirming the finding does not refer to some material or contrary evidence in its order it cannot be said that it has been ignored from consideration so as to entitle the High Court to interfere under Article 226 of the Constitution."

Rule 8 of U.P. Act o.13 of 1972 provides as under:

"8. Ascertainment of vacancy (1) The District Magistrate shall before making any order of allotment or released in respect of any building which is alleged to be vacant under section 12 or to be otherwise vacant or to be likely to fall vacant, get the same inspected by a Gazetted Officer.

(2) The inspection of the building, so far as possible, shall be made in the presence of the landlord and the tenant or any other occupant. The facts mentioned in the report should wherever practicable, be elicited from at least two respectable persons in locality and the conclusion of the inspection report shall be pasted on the notice board of the officer of the District Magistrate for the information of the general

public, and an order of allotment may be passed not before the expiration of three days from the date of such pasting, and if in the meantime any objection is received, not before the disposal of such objection."

The aforesaid sub clause (2) has been enacted in order to safeguard the interest of the sitting tenant. In the present case the petitioner has not received any notice as Required under Rule 8 of U.P.Act No. 13 of 1972, Further he has not been given any opportunity of leading the evidence in the form of objection as contained in sub clause (3) of Rule 8 of U.P.Act No. 13 of 1972. The entire proceedings have been decided on the presumption that Vishnu Kumar Jain was the tenant and has illegally handed over the possession to Hari Chand, now so called as Hukam Chand.

Absolutely there is no evidence on the record as to when Vishnu Kumar occupied the premises and when he has vacated the premises and in absence of any document on the record no presumption can be drawn that there has been a substantial removal of effects on the part of Vishnu Kumar Jain as contained under section 12(1)(a & b) so as to create any deemed vacancy under section 12 of the Act. The said section is quoted below:

"Deemed vacancy of building in certain cases (1) A landlord or tenant of a building shall be deemed to have ceased to occupy the building or a part thereof if-

(a) he has substantially removed his effects there from, or.

(b) he has allowed it to be occupied by any person who is not a member or his family."

In order to justify section 12(1)(a) there is no evidence on the record as to when Vishnu Kumar Jain occupied the premises and when he has vacated the same. So far as clause (b) of Section 12 is concerned there is no evidence on the record that the possession has be parted by Vishnu Kumar Jain at any point of time is favour of the petitioner. So far as the report of the Inspector is concerned a bare report of the Inspector can not be said to be the sole evidence unless it is accompanied by the documentary evidence showing that Vishnu Kumar Jain has handed over the possession to the petitioner.

In 1982 Allahabad Rent cases page 594 Smt. Kanti Khare Vs III Addl. District Judge, Allahabad and others it has been held that under Rule 8(2) the Inspector is required to inspect the building and Rule 8(3) the objection to the Notification of the vacancy has to be decided considering the evidence that the objector or any other person may adduce. The observations of the Division Bench are quoted below.

"Under Rule 8(2), the Inspector is required to inspect the building as far as possible in the presence of the parties and submit his report after eliciting the necessary facts. The conclusion of the report is then to be notified by posting on the notice board for general information. Under Rule 8(3), an objection to the notification of the vacancy has to be decided

considering the evidence that the objector or any other persons may adduce."

So far as the report of the Inspetor it has been held by the Division Bench (supra) that the report of the Inspector is not a last word and it has to be ascertained in accordance with the facts existing on the spot. The observations are quoted below:

"It can not be contended that the report of the Inspector is a last word and has to be taken as a gospel truth. The purpose of the report is only to ascertain the facts as existing on spot. The report was not made final otherwise there was no need to make a provision of inviting objections by posting the same on the notice board. If an objection can be filed law fully by taking an action against notification of vacancy, there if no reason to think that an objection against the report of the Inspector that no vacancy exists is barred. The object of local investigation is not so much to collect the evidence which can be taken any way but to obtain evidence which from its peculiar nature can only be had on the spot and to elucidate any point which is left doubtful on the evidence taken before the court. A report of the Inspector is merely to assist the Rent Control and Eviction Officer. It is not in any way binding on him, who can arrive at its own conclusion, which may be at variance with such report. The Rent Control and Eviction Officer is empowered to take into due consideration the report submitted by the Inspector. He

cannot dispose of the application made for allotment by accepting the report behind the back of the person applying for allotment treating the report as final. The value of the report submitted by the Inspector is certainly open to question. We are, therefore, of opinion that the construction of Rule 8 did not justify the action of the the Rent Control and Eviction Officer dropping the case of the allotment."

The Division Bench has also observed that in these matters natural justice is a great humanizing principle intended to invest law on the fairness and to secure justice. The observation are quoted below:

"Although we have found on interpretation of Rule 8 itself that it had not been complied with, the order of the Rent Control and Eviction Officer dated 30th July, 1977 is void. We are otherwise also of opinion that even if there was no statutory obligation, the principle of natural justice made it obligatory or the Rent Control and Eviction Officer to give an opportunity to the petitioner to submit her case, and non-compliance of the said Rule has rendered the said order to be invalid. It did not make the order final and binding.

In Swadeshi Cotton Mills V. Union of India, the observation made are:-

"But two fundamental maxims of natural justice have now become deeply and indelibly ingrained in the common consciousness of mankind as pre-eminently necessary to ensure that the law is applied impartially"

In Menka Gandhi's Bhagwati J. observed :-

"Natural justice is a great humanizing principle intended to invest law with fairness and to secure justice and over the years it has grown into a widely pervasive rule affecting large areas of administrative action. The inquiry must always be : does fairness in action demand that an opportunity to be heard should be given to the person effected" (Para 58). The law must now be taken to be well settled that even in an administrative proceeding, which involves civil consequences, the doctrine of natural justice must be held to be applicable."

Another decision of the Supreme Court which has a hearing on the controversy in hand is Mohinder Singh Gill V. The Chief Election Commissioner. It was observed

"Fair hearing is thus a postulate of decision-making cancelling a poll, although fair abridgment of that process is permissible. It can be fair without the rules of evidence or forms of trial. It cannot be fair of apprising the affected and appraising the representations is absent. The philosophy behind natural justice is, in one sense, participatory justice in the process of democratic rule of law."

In the instant case, we think that the petitioner was entitled to a hearing being given before the application was rejected."

The counsel for the petitioner has submitted that the documents filed by the petitioner under section 16(5) of the Act has not been taken into consideration

While deciding the application under Section 16(5) of the Act. No finding has been recorded by the Rent Control and Eviction Officer regarding the occupation of the petitioner. The vacancy was initiated on the ground that Vishnu Kumar has handed over the possession to the petitioner unauthorisedly, there being no evidence on the record to justify the existence to Vishnu Kumar Jain so as to create a fiction of letting out the accommodation to the petitioner unauthorisedly. In such circumstances, it was a case where objections should have been invited in accordance with sub clause (2) of Rule 8 of U.P.Act No.13 of 1972.

It is also well settled that Rule 8(2) being mandatory a notice ought to have been given before the inspection had taken place as held in 1982 A.R.C. page 285 Kailash Chand and another Vs. Kailash Narain and others to the following effect:

"In Mohammad Naseem v. A.R.O., it was emphasized that sub-rule (2) of Rule 8 makes it incumbent upon the Rent Control Inspector to make an effort to contact the landlord at the time of his inspection and in the absence of any material to indicate that it was not possible for him to do so his report given on the basis of an inspection in the absence of the landlord was in violation of Rule 8 of the Rules."

In Smt.Kanta Gupta Vs VIII Addl. District Judge, Meerut and other, 1987 Vol 2 A.R.C. page 108 it has been held as under:

"Thus, if Rule 8 aforesaid, and its procedure is examined with the circumstances of the present case, then the aforesaid rule was violated with impunity. The vacancy was declared illegally, likewise an illegal allotment order was made. The facts on record, and not disputed are that before the exercise to consider vacancy or the allotment order, the landlord's presence was not ensured as she was without notice of inspection; the facts set on record had not been elicited from at least two persons, much less two respectable persons of the locality; the inspection reports was not on the notice board; the allotment order was without a public notice or any other notice to landlord; the date fixed for objections was 20th May,1985 and the allotment order was passed the next 21st May, 1985.

The Act of declaring vacancy in a premises or subjecting it to allotment, under the Act aforesaid, has to confirm to the procedure prescribed. None of these acts can be occasioned without notice to the owner or landlord of the premises. Further of these acts, if without notice to the landlord, are illegal. The Supreme Court has declared it so in the case of Yogendra Tiwari v. and District Judge, Gorakpur and others, AIR 1984 SC 1149:1984 (2) ARC 7 (SC) and reiterated this view in its recent decision of Dr. Smt . Keshav Devi v. Girdhari Lal Pahawa and others, AIR 1987 SC 22:1987 (1) ARC 6 (SC).

Since the vacancy being sine qua non for allotment and release proceedings, therefore, a writ petition is maintainable. The question of opportunity to the petitioner before making an allotment and release is also a condition precedent by virtue of the proviso to Section 16 of U.P.Act 0.13 of 1972. Proviso to Section 16 refers to sub section (4) of Section 12 where the vacancy is declared. For ready perusal sub clause (4) of Section 12 are quoted below:

"12(4) Any building or part which a landlord or tenant has ceased to occupy within the meaning of sub section (1), or sub section (2), shall for the purposes of this Chapter, deemed to be vacant."

The question of opportunity also came up before the Apex Court in the case of Yogendra Tewari Vs District Judge, Gorakhpur, 1984 Vol 2 A.R.C. page 7 that before making an order of allotment by the District Magistrate under section 16(1)(a) of the Act it consists of two stages first is actual vacancy of a building and the second when the allotment /release is made. The observations of the Apex Court is quoted below.

"It is needless to stress that the making of an order of allotment by the District Magistrate under Section 16(1)(a) of the Act consists of two stages. The first stage is actual vacancy of a building or a part thereof under Section 12(4). It is clear from the terms of the proviso to Section 16(1) that in the case of

deemed vacancy under Section 12(4) of the Act, the *District Magistrate is required to give an opportunity to the landlord or the tenant, as the case may be, of showing that no declaration of deemed vacancy under Section 12(4) could at all be made in his case before making an order of allotment under Section 16(1)(a). The use of the word 'shall' in the proviso to Section 16(1)(a) makes the requirement mandatory. The District Magistrate therefore cannot make an order of allotment under Section 16(1)(a) on the strength of deemed vacancy under Section 12(4) until the landlord or the tenant, s the case may be, has an opportunity of being heard in the matter. The District Magistrate is required in terms of Rule 8(2) to give an opportunity to the landlord to file his objection or make his submission, if any, to the making of an order of allotment under Section 16(1)(a). In the case of deemed vacancy referred to in Section 12(4), he is entitled to show that none of the clauses (a) to (c) of Section 12(1) comes into play. The second stage is reached when there is a deemed vacancy under Section 12(4) or actual vacancy in consequence of an intimation under Section 15."*

Law is well settled that where the Act provides that certain thing has to be done in certain manner there is no occasion to ignore the same. In (1999) 8 Supreme Court Cases 266, Chandra Kishore Jha Vs. Mahavir Prasad & Others, it has been held as under :

"It is a well settled salutary principal that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner."

In view of the aforesaid, the matter is sent back to the Rent Control and Eviction Officer for deciding the case afresh in the light of the observations made above within a period of four months. Both the parties shall be given opportunity to lead evidence on the question of vacancy.

The writ petition is allowed with a direction to the Rent Control and Eviction Officer to decide the case.

No order as to costs.

Dated: 23/09/2004. **(Rajesh Tandon - J)**

S.S.Negi.